

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

11 NATHAN SOTO,)	Case No.: 1:20-cv-0587 NONE JLT
)	
12 Plaintiff,)	FINDINGS AND RECOMMENDATIONS
)	DENYING PLAINTIFF’S MOTION TO PROCEED
13 v.)	IN FORMA PAUPERIS AND DISMISSING THE
)	ACTION WITHOUT PREJUDICE FOR LACK OF
14 JANO MATTEO, Kern County Public)	JURISDICTION
15 Defender,)	
)	
16 Defendants.)	

Nathan Soto imitated this action by filing a complaint for violations of his civil rights and a request to proceed *in forma pauperis*. (Docs. 1, 2) The Court finds Plaintiff is unable to state a claim upon which relief may be granted, as his claims are intertwined with ongoing state criminal proceedings and barred by the *Younger* abstention doctrine. Therefore, the Court recommends Plaintiff’s motion to proceed *in forma pauperis* be **DENIED** and the complaint **DISMISSED** without prejudice as the Court lacks jurisdiction.

I. Background and Allegations

Plaintiff asserts that he has suffered a violation of his civil rights and Jano Matteo, a public defender, has provided “ineffective counsel,” including lying “about filing motions” and “will not fight for [Plaintiff].” (Doc. 1 at 2-3)

The docket of the Kern County Superior Court indicates that in Case No. MF013423A, Plaintiff was charged with obstruction/resisting an executive office in violation of Cal. Pen. Code § 69;

1 obstruction/resistance of an officer in violation of Cal. Pen. Code § 148(a)(1); and contempt of court in
 2 violation of Cal. Pen. Code § 166(a)(4).¹ The docket also indicates that a jury trial is set to begin in this
 3 action on June 15, 2020.

4 **II. Request to proceed *in forma pauperis***

5 As a general rule, all parties instituting any civil action, suit or proceeding in a United States
 6 District Court must pay a filing fee. 28 U.S.C. § 1914(a). However, the Court may authorize the
 7 commencement of an action “without prepayment of fees and costs of security therefor, by a person
 8 who submits an affidavit that . . . the person is unable to pay such fees or give security therefor.” 28
 9 U.S.C. § 1915(a)(1). Therefore, an action may proceed despite a failure to prepay the filing fee only if
 10 leave to proceed *in forma pauperis* is granted by the Court. *See Rodriguez v. Cook*, 169 F.3d 1178,
 11 1177 (9th Cir. 1999).

12 The Ninth Circuit has held “permission to proceed in forma pauperis is itself a matter of
 13 privilege and not a right; denial of an in forma pauperis status does not violate the applicant’s right to
 14 due process.” *Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th Cir. 1984) (citing *Weller v. Dickson*, 314
 15 F.2d 598, 600 (9th Cir. 1963)). In addition, the Court has broad discretion to grant or deny a motion to
 16 proceed IFP. *O’Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990); *Weller*, 314 F.2d at 600-01. In
 17 making a determination, the court “must be careful to avoid construing the statute so narrowly that a
 18 litigant is presented with a Hobson’s choice between eschewing a potentially meritorious claim or
 19 foregoing life’s plain necessities.” *Temple v. Ellerthorpe*, 586 F.Supp. 848, 850 (D.R.I. 1984).

20 The Court recommends Plaintiff’s application to proceed *in forma pauperis* be denied because,
 21 as discussed below, the complaint fails to state a meritorious claim upon which relief may be granted.
 22 *See, e.g., Minetti v. Port of Seattle*, 152 F.3d 1113, 1115 (9th Cir. 1998) (“A district court may deny
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24 ¹ The Court may take judicial notice of a fact that “is not subject to reasonable dispute because it (1) is generally
 25 known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose
 26 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201; *see also United States v. Bernal-Obeso*, 989 F.2d 331, 333
 27 (9th Cir. 1993). The official records of the Superior Court of Kern County, as contained in the court’s official website, are
 28 sources whose accuracy cannot reasonably be questioned, and judicial notice may be taken of facts on a website of a
 government agency. *See O’Toole v. Northrop Grumman Corp.*, 499 F.3d 1218, 1225 (10th Cir. 2007) (“It is not uncommon
 for courts to take judicial notice of factual information found on the world wide web”); *Denius v. Dunlap*, 330 F.3d 919,
 926-27 (7th Cir. 2003) (taking judicial notice of information on the website of a government agency); *United States ex rel.*
Dingle v. BioPort Corp., 270 F.Supp.2d 968, 972 (W.D. Mis. 2003) (“government documents are generally considered not
 to be subject to reasonable dispute . . . This includes public records and government documents available from reliable
 sources on the Internet”). Further, judicial notice may be taken of court records. *Mullis v. United States Bank. Ct.*, 828 F.2d
 1385, 1388 n.9 (9th Cir. 1987). Accordingly, the Court takes judicial notice of the docket related to Case No. MF013423A.

1 leave to proceed in forma pauperis at the outset if it appears from the face of the proposed complaint
 2 that the action is frivolous or without merit”); *Tripati v. First Nat’l Bank & Trust*, 821 F.2d 1368, 1369
 3 (9th Cir. 1987) (same).

4 **III. Screening Requirement**

5 When an individual seeks to proceed *in forma pauperis*, the Court is required to review the
 6 complaint and identify “cognizable claims.” *See* 28 U.S.C § 1915(a)-(b). The Court must dismiss a
 7 complaint, or portion of the complaint, if it is “frivolous, malicious or fails to state a claim upon which
 8 relief may be granted; or . . . seeks monetary relief from a defendant who is immune from such relief.”
 9 28 U.S.C. § 1915A(b); 28 U.S.C. § 1915(e)(2). A claim is frivolous “when the facts alleged rise to the
 10 level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts
 11 available to contradict them.” *Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992).

12 **IV. Pleading Standards**

13 The Federal Rules of Civil Procedure set forth the applicable standards for pleading complaints.
 14 A pleading stating a claim for relief must include a statement affirming the court’s jurisdiction, “a short
 15 and plain statement of the claim showing the pleader is entitled to relief; and . . . a demand for the relief
 16 sought, which may include relief in the alternative or different types of relief.” Fed. R. Civ. P. 8(a).
 17 The Federal Rules adopt a flexible pleading policy, and *pro se* pleadings are held to “less stringent
 18 standards” than pleadings by attorneys. *Haines v. Kerner*, 404 U.S. 519, 521-21 (1972).

19 A complaint must give fair notice and state the elements of the plaintiff’s claim in a plain and
 20 succinct manner. *Jones v. Cmty Redevelopment Agency*, 733 F.2d 646, 649 (9th Cir. 1984). The
 21 purpose of the complaint is to give the defendant fair notice and the grounds upon which the complaint
 22 stands. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002). The Supreme Court noted,

23 Rule 8 does not require detailed factual allegations, but it demands more than an
 24 unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers
 25 labels and conclusions or a formulaic recitation of the elements of a cause of action will
 not do. Nor does a complaint suffice if it tenders naked assertions devoid of further
 factual enhancement.

26 *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009) (internal quotation marks and citations omitted).

27 Conclusory and vague allegations do not support a cause of action. *Ivey v. Board of Regents*, 673 F.2d
 28 266, 268 (9th Cir. 1982). The Court clarified further,

[A] complaint must contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.” [Citation]. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. [Citation]. The plausibility standard is not akin to a “probability requirement,” but it asks for more than a sheer possibility that a defendant has acted unlawfully. [Citation]. Where a complaint pleads facts that are “merely consistent with” a defendant’s liability, it “stops short of the line between possibility and plausibility of ‘entitlement to relief.’”

Iqbal, 566 U.S. at 678 (citations omitted). When factual allegations are well-pled, a court should assume their truth and determine whether the facts would make the plaintiff entitled to relief; conclusions in the pleading are not entitled to the same assumption of truth. *Id.* The Court may grant leave to amend a complaint to the extent that deficiencies of the complaint can be cured by an amendment. *Lopez v. Smith*, 203 F.3d 1122, 1127-28 (9th Cir. 2000) (en banc).

V. Discussion and Analysis

As an initial matter, Plaintiff fails to clearly identify his claims against his public defender, though it appears he seeks to state a claim for violations of his civil rights and ineffective assistance of counsel. (*See generally* Doc. 1)

A. Section 1983 Claims

An individual may bring an action for the deprivation of civil rights pursuant to 42 U.S.C. § 1983, which states in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983. To state a cognizable claim under Section 1983, a plaintiff must allege facts from which it may be inferred (1) he was deprived of a federal right, and (2) a person or entity who committed the alleged violation acted under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Williams v. Gorton*, 529 F.2d 668, 670 (9th Cir. 1976).

Significantly, however, a public defender does not act under color of state law when acting in the role of an advocate. *Polk County v. Dodson*, 454 U.S. 312, 325-26 (1981). The Supreme Court explained public defenders do not act under color of state law because their conduct as legal advocates is controlled by professional standards that are independent of the administrative direction of a

1 supervisor. *Id.* at 312-22. Consequently, Plaintiff is unable to proceed against his public defender for a
 2 violation of his civil rights under Section 1983.

3 **B. Younger Abstention Doctrine**

4 In general, federal courts are required to abstain from interfering on ongoing state criminal
 5 matters. *Younger v. Harris*, 401 U.S. 37, 43-45 (1971). This abstention doctrine applies if four
 6 conditions are met: “(1) a state-initiated proceeding is ongoing; (2) the proceeding implicates important
 7 state interests; (3) the federal plaintiff is not barred from litigating federal constitutional issues in the
 8 state proceeding; and (4) the federal court action would enjoin the proceeding or have the practical
 9 effect of doing so, i.e., would interfere with the state proceeding in a way that *Younger* disapproves.”
 10 *San Jose Silicon Valley Chamber of Commerce Political Action Comm. v. City of San Jose*, 546 F.3d
 11 1087, 1092 (9th Cir.2008).

12 First, it is clear the state criminal proceedings are ongoing, and Plaintiff is in the custody of the
 13 state. Second, the state criminal proceedings implicate important state interests. Indeed, in *Kelly v.*
 14 *Robinson*, 479 U.S. 36, 49 (1986), the Court held, “This Court has recognized that the States’ interest in
 15 administering their criminal justice systems free from federal interference is one of the most powerful
 16 of the considerations that should influence a court considering equitable types of relief.” Likewise, in
 17 *Younger*, the Supreme Court held, “Since the beginning of this country’s history Congress has, subject
 18 to few exceptions, manifested a desire to permit state courts to try state cases free from interference by
 19 federal courts.” *Younger*, 401 U.S. at 43.

20 Third, there is no showing Plaintiff could not raise the issue of his counsel in the criminal
 21 proceedings, and there is no procedural bar from Plaintiff raising his federal claim in the state
 22 proceeding. *Martori Bros. Distribs. v. James–Massengale*, 781 F.2d 1349, 1352, 1354 (9th Cir. 1985).
 23 Thus, he has a full and fair opportunity to raise the federal claims in state court. *Commc’ns Telesys.*
 24 *Int’l v. Cal. Pub. Util. Comm’n*, 196 F.3d 1011, 1019 (9th Cir.1999). Finally, it appears Plaintiff’s
 25 complaint seeks to insert the federal court into the ordinary course of state criminal proceedings and, if
 26 permitted, would threaten the autonomy of the state court. Accordingly, the Court finds the claims are
 27 barred by the *Younger* abstention doctrine.

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1 **VI. Findings and Recommendations**

2 Based upon the facts alleged, it does not appear the deficiencies can be cured by amendment,
3 and granting leave to amend would be futile. *See Lopez*, 203 F.3d at 1130; *See Noll v. Carlson*, 809
4 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff is unable to proceed on his claims in this Court in light
5 of the *Younger* abstention doctrine. Accordingly, the Court **RECOMMENDS**:

- 6 1. Plaintiff's complaint be **DISMISSED** without prejudice for lack of jurisdiction;
- 7 2. Plaintiff's motion to proceed *in forma pauperis* be **DENIED**; and
- 8 3. The Clerk of Court be **DIRECTED** to close this action.

9 These findings and recommendations are submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local
11 Rules of Practice for the United States District Court, Eastern District of California. Within fourteen
12 days after being served with these findings and recommendations, Plaintiff may file written objections
13 with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings and
14 Recommendations." Plaintiff is advised failure to file objections within the specified time may waive
15 the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991);
16 *Wilkerson v. Wheeler*, 772 F.3d 834, 834 (9th Cir. 2014).

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18 IT IS SO ORDERED.

19 Dated: May 4, 2020

/s/ Jennifer L. Thurston
20 UNITED STATES MAGISTRATE JUDGE
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